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HUMAN RIGHTS COMMITTEE
Fifty-seventh session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Preliminary Observations of the Human Rights Committee

PERU

1. The Committee initiated its consideration of the third periodic report of Peru (CCPR/C/83/Add.1 and HRI/CORE/1/Add.43/Rev.1) at its 1519th to 1521st meetings, on 18 and 19 July 1996 (CCPR/C/SR.1519 to 1521), at which it dealt with urgent issues relating to the implementation of articles 2, 4, 6, 7, 9, 10, 14 and 27 of the Covenant. Further consideration of the report was adjourned to the fifty-eighth session of the Committee to be held at the United Nations Office at Geneva from 21 October to 8 November 1996. In the light of the examination of the first part of the report and the observations made by the members of the Committee, the Committee, at its 1528th meeting , on 25 July 1996, adopted the following preliminary observations and recommendations:

A. Introduction

2. The Committee welcomes the third periodic report submitted by the State party and welcomes the delegation's willingness to engage in a dialogue with the Committee. The Committee regrets, however, that although the report and the additional written and oral information provided by the delegation of Peru in answer to the questions raised by the

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Committee provided information on general legislative norms in Peru, it largely failed to deal with the actual state of implementation of the Covenant in practice and the difficulties encountered in the course of implementation. The Committee appreciated the presence of a high-level delegation which provided helpful information to the Committee in addressing some of its questions and thus allowed it to obtain a somewhat clearer view of the overall human rights situation in the State party.

B. Factors and difficulties affecting the implementation of the Covenant

3. The Committee is aware that Peru has been plagued by terrorist activities, internal disorder and violence. The Committee affirms the right and duty of the State party to take firm measures to protect its population against terror. However, many of the measures adopted by the Government have frustrated implementation of the rights protected under the Covenant.

C. Positive aspects

4. The Committee notes that there seems to be a trend towards reducing the level of violence within the country, a significative diminution of the number of reported disappearances and the return of internally displaced persons to their residence. The Committee expresses the hope that this trend will lead to the full restoration of the rule of law and a return to normalcy in the political and social life of the nation. In this connection, it welcomes recent laws modifying the anti-terrorist laws to permit, inter alia, representation by human rights lawyers of multiple defendants suspected of terrorism and drug trafficking and cross-examination by lawyers of police and security personnel. The Committee also welcomes the decree modifying Decree Law 25,475, by which an accused person whose acquittal has been annulled by the Supreme Court and so has to be retried, is no longer required automatically to be detained; the courts can place on him an obligation to appear for his new trial.

5. The Committee notes with satisfaction the establishment of the Office of the Public Ombudsman and the National Registry of Detainees. In this regard, it notes the delegation's statement that the Office of the Public Ombudsman though not yet fully functional is already receiving and investigating complaints of human rights violations. It notes with satisfaction that, following the adoption of the 1993 Constitution, the members of the Constitutional Court have now been appointed and the Court is now in position to exercise its functions.

6. The Committee further welcomes the adoption of Decree Law 26,447, which as of April 1995 raised the age of criminal responsibility from 15 to 18 years of age, as well as of Decree Law 25,398 which repealed the repentance law, and Decree Law 26,248 which restored habeas corpus.

7. With respect to article 27, the Committee welcomes action taken to protect the rights of indigenous communities, including efforts to provide education in national and native languages, promote economic development and establish other mechanisms for their protection.

D. Principal subjects of concern

8. The Committee deplores that its suggestions and recommendations contained in the Concluding Observations adopted at the end of the consideration of Peru's second periodic report and supplementary reports (CCPR/C/79/Add.8) have not been implemented.

9. The Committee is deeply concerned that the amnesty granted by Decree Law 26,479 on 14 June 1995 absolves from criminal responsibility and, as a consequence, from all forms of accountability, all military, police and civilian agents of the State who are accused, investigated, charged, processed or convicted for common and military crimes for acts occasioned by the "war against terrorism" from May 1980 until June 1995. It also makes it practically impossible for victims of human rights violations to institute successful legal action for compensation. Such an amnesty prevents appropriate investigation and punishment of perpetrators of past human rights violations, undermines efforts to establish respect for human rights, contributes to an atmosphere of impunity among perpetrators of human rights violations, and constitutes a very serious impediment to efforts undertaken to consolidate democracy and promote respect for human rights and is thus in violation of article 2 of the Covenant. In this connection, the Committee reiterates its view, as expressed in its General Comment 20 (44), that this type of amnesty is incompatible with the duty of States to investigate human rights violations, to guarantee freedom from such acts within their jurisdiction, and to ensure that they do not occur in the future.

10. In addition, the Committee expresses serious concern in relation to the adoption of Decree Law 26,492 and Decree Law 26,6181, which purport to divest individuals of the right to have the legality of the amnesty law reviewed in courts. With regard to article 1 of this law, declaring that the Amnesty Law does not undermine the international human rights obligations of the State, the Committee stresses that domestic legislation cannot modify a State party's international obligations under the Covenant.

11. The committee notes with concern that provisions of article 4 of the Covenant have often been disregarded during the reporting period in that rights which are allowed to be derogated from only in time of officially proclaimed state of emergency have been, and still are, restricted without the conditions of derogation being met.

12. The Committee expresses its deepest concern about Decree Law 25,475 and Decree Law 25,659 which seriously impair the protection of the rights contained in the Covenant for persons accused of terrorism and contradicts in many respects the provisions of article 14 of the Covenant. Decree Law 25,475 contains a very broad definition of terrorism under which innocent persons have been and remain detained. It establishes a system of trial by "faceless judges", where the defendants do not know who are the judges trying them and are denied public trials, and which places serious impediments, in law and in fact, to the possibility for defendants to prepare their defence and communicate with their lawyers. Under Decree Law 25,659, cases of treason are tried by military courts, regardless of whether the defendant is a civilian or a member of the military or security forces. In this connection, the Committee expresses its deep concern that persons accused of treason are being tried by the same military force that detained and charged them, that the members of the military courts are active duty officers, that most of them have not received any legal training and that, moreover, there is no provision for sentences to be reviewed by a higher tribunal. These shortcomings raise

serious doubts about the independence and impartiality of the judges of military courts. The Committee emphasizes that trials of non-military persons should be conducted in civilian courts before an independent and impartial judiciary.

13. While taking note of bills aiming at granting pardon to some categories of persons convicted for terrorism and treason, the Committee is concerned by the absence of systematic review of the convictions pronounced as a result of trials before the military courts in trials which have not met the requirement of a fair trial as specified in article 14 of the Covenant.

14. The Committee notes with concern that the judges retire at the expiration of 7 years and require recertification for re-appointment, a practice which tends to affect the independence of the judiciary by denying security of tenure.

15. The Committee notes with deep concern the extension of the death penalty in the 1993 Constitution to a wider range of activities than in the 1979 Constitution. The Committee recalls its General Comment 6 (1982) on article 6 in which it indicated that States are obliged to abolish the death penalty for other than the most serious crimes. Extension of the scope of application of the death penalty raises questions as to the compatibility with article 6 of the Covenant.

16. The Committee expresses its highly concern with respect to the cases of disappearances, summary executions, torture, ill-treatment and arbitrary arrest and detention by members of the army and security forces, and by the government's failure to investigate fully these cases, to prosecute alleged offences, to punish those found guilty and provide compensation to the victims of their families.

17. The Committee expresses its deepest concern with respect to cases of disappearances, summary executions, torture, ill-treatment, and arbitrary arrest and detention by members of the army and security forces, and by the government's failure to investigate fully this cases, to prosecute alleged offences, to point those found guilty and provide compensation to the victims and their families. The Committee is particularly concerned at the failure to resolve the high number of cases of past disappearances.

18. The Committee is deeply concerned by persistent reports of torture or cruel, inhuman or degrading treatment of persons detained under suspicion of involvement in terrorist activities or other criminal activities. It regrets the failure of the State party to provide the Committee with detailed information on the measures adopted to prevent torture and cruel, degrading or inhuman treatment, and to punish those responsible. It draws attention to the legislation which permits incommunicado detention in certain cases. In this connection, the Committee reiterates its view, as expressed in its General Comment 20 on article 7, that incommunicado detention is conducive to torture and that, consequently, this practice should be avoided.

19. The Committee takes note with concern that provisions in article 2, para. 24, f) of the Constitution, which permits preventive detention for up to 15 days in cases of terrorism, espionage and illicit drug trafficking, as well as Decree Law 25,475, which authorizes extension of preventive detention in certain cases for up to 15 days, raise serious issues with regard to article 9 of the Covenant.

20. The Committee takes note of Decree Law 25,499 of 1992, according to which repentance of one's association with a terrorist organization and information concerning such organizations or which lead to the identification of other persons involved can lead to a reduction in his or her sentence. The Committee is concerned that this law may have been used by individuals to denounce innocent persons in order to avoid prison sentences or to reduce the duration, a concern that is supported by the fact that there are at least seven draft proposals - one of them from the Defensor Publico and another from the Ministry of Justice - and a Decree Law 26,329 attempting to solve the problem of innocent people being prosecuted or having been convicted under the anti-terrorist laws.

E. Suggestions and recommendations

21. The Committee recommends that necessary steps be taken to restore the authority of the judiciary, give effect to the right to effective remedy under article 2 of the Covenant and thus overcome the prevailing atmosphere of impunity. In view of the fact that the Committee considers that the Amnesty laws violate the Covenant, it recommends that the Government of Peru review and repeal these laws to the extent of such violations. In particular, it urges the government to remedy the unacceptable consequences of these laws by, inter alia, establishing an effective system of compensation for the victims of human rights violations and by taking the necessary steps to ensure that the perpetrators of these violations do not continue to hold government positions.

22. The Committee urges the State party to take immediate measures with a view to release innocent prisoners and to provide them with compensation, to systematically revise, on a non-discretionary basis, convictions handed down by the military tribunals in treason and terrorism cases, particularly convictions based on lack of identification documents or on evidence obtained in the application of the repentance law. The same applies to detainees awaiting trial.

23. The Committee urges the State party to take effective measures to investigate allegations of summary executions, disappearances, cases of torture and ill-treatment, and arbitrary arrest and detention, to bring the perpetrators to justice, to punish them and to compensate victims. If allegations of such crimes have been made against members of the security forces, whether military or civilian, the investigations should be carried out by an impartial body that does not belong to the organization of the security forces themselves. Persons convicted of such crimes should be dismissed and, pending the outcome of the investigation, be suspended from office.

24. Urgent measures should be taken to strictly limit incommunicado detention. Provisions should be made in the Penal Code to criminalize acts that are committed for the purpose of inflicting pain, without prejudice as to whether those acts result in permanent injury.

25. The duration of preventive detention should be reasonable and any arrested person should be brought promptly before a judge.

26. The Committee particularly urges that the system of "faceless judges" be abolished and that public trials for all defendants, including those charged with terrorist-related activities, be reinstated immediately. The Government of Peru should ensure that all trials are conducted with full respect for the safeguards of fair trial provided by article 14, including in particular the right to communicate with counsel and the right to have time and facilities to prepare the defence and the right to have the conviction reviewed.

27. In addition, the Committee recommends that the requirement for judges to be recertified be reviewed and replaced by a system of secure tenure and independent judicial supervision. During the reform process being undertaken in the judicial order, the Committee recommends that every effort be made to ensure the independence and impartiality of the judiciary.